No. 02-837

Supreme Court, U.S.
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In The

Supreme Court of the United States

MORETON ROLLESTON, JR.,

Petitioner,

v.

THE ESTATE OF REBECCA WIGHT CHERRY SIMS,
JOHN RANDOLPH CHERRY, EXECUTOR,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Petitioner Rolleston contends that the Judgment on Jury Verdict which provides for statutory post-judgment interest violated his constitutional rights because it deprived him of his right to jury trial on the issue of interest. On the contrary, post-judgment interest at 12% is a matter of statutory law in Georgia. O.C.G.A. § 7-4-12.

Petitioner has presented nothing for review by this Honorable Court because the Judgment on Jury Verdict in Civil Action D97003, Superior Court of Fulton County, attached to Petitioner's Brief as Appendix "B", was the subject of Petitioner's prior Petition for Writ of Certiorari to this Court, denied on May 4, 1998 in Docket No. 97-1445. Petitioner's Petition is accordingly barred by *res judicata* and as a matter of law.

Petitioner omitted the order on summary judgment entitled "Findings of Fact, Conclusions of Law, and Final Order on Summary Judgment" issued by the Superior Court of Cobb County in Civil Action 00-1-6547, on February 13, 2001, which is the Order appealed from in the case at bar. [Respondent's Appendix "B"]

Petitioner's claim is controlled by O.C.G.A. § 7-4-12 which imposes interest at twelve (12%) per cent on all judgments rendered in Georgia unless otherwise provided by law. Petitioner's claim is further barred by O.C.G.A. § 9-11-60 (a), (b) and (f) which prohibit collateral attack on a judgment and provide for direct attack only in the court of rendition and only within three (3) years from entry of judgment. Petitioner's appeal fails in both respects.

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OPINION AND JUDGMENT BELOW

Petitioner filed his Complaint in the Superior Court of Cobb County, Civil Action 00-1-6547, on August 21, 2000, more than five (5) years after entry of judgment on jury verdict in Superior Court of Fulton County in Civil Action D97003. [Complaint, Appendix "A"]

The Cobb county trial court ruled in favor of Respondent on February 13, 2001 when it issued its "Findings of Fact, Conclusions of Law, and Final Order on Summary Judgment". [Appendix "B"]

Petitioner filed a Notice of Appeal to the Supreme Court of Georgia, Appeal No. S01A1496. [Appendix "C"] Rolleston filed his Enumeration of Error under that Appeal number. [Appendix "D"].

Petitioner's Petition was transferred by the Supreme Court of Georgia to the Georgia Court of Appeals on September 17, 2001, [Appendix "E"] and docketed as Appeal A02A0268. The Court of Appeals affirmed the trial court's judgment on May 2, 2002. [Appendix "F"]

Petitioner applied for a Writ of Certiorari to the Georgia Supreme Court on May 17, 2002. [Appendix "G"]. The Georgia Supreme Court denied this Petition on September 6, 2002. [Appendix "H"]

Petitioner filed his Notice of Filing of Petition for Certiorari to this Court on September 10, 2002. [Appendix "I"]

GEORGIA STATUTES INVOLVED

O.C.G.A. § 7-4-12. Interest on Judgments.

All judgments in this state shall bear interest upon the principal amount recovered at the rate of 12 percent per year unless the judgment is rendered on a written contract or obligation providing for interest at a specified rate, in which case the judgment shall bear interest at the rate specified in such contract or obligation. The postjudgment interest provided for in this code section shall apply automatically to all judgments in this state and such interest shall be collectable as a part of each such judgment whether or not such judgment specifically reflects the entitlement to such interest.

O.C.G.A. § 9-12-40. Judgment conclusive between which persons and on what issues.

A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.

O.C.G.A. § 9-11-60. Relief from Judgments.

(a) ***Collateral attack.*** *A judgment void on its face may be attacked in any court by any person. In all other instances, judgments shall be subject to attack only by a direct proceeding brought for that purpose in one of the methods prescribed in this Code section.*

(b) ***Methods of direct attack.*** *A judgment may be attacked by motion for a new trial or motion to set aside.*

Judgments may be attacked by motion only in the court of rendition.

. . . .

(f) ***Procedure; time of relief.*** *Reasonable notice shall be afforded the parties on all motions. Motions to set aside judgments may be served by any means by which an original complaint may be legally served if it cannot be legally served as any other motion. A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time. Motions for new trial must be brought within the time prescribed by law. In all other instances, all motions to set aside judgment shall be brought within three years from entry of the judgment complained of.*

. . . .

[emphasis added]

ERRORS AND OMISSIONS IN PETITIONER'S STATEMENT OF THE CASE

Petitioner has blatantly misrepresented to this Court the essential material fact that the judgment on appeal to this Court from the Court of Appeals and the Supreme Court of the State of Georgia is the order on summary judgment issued February 13, 2001, in Civil Action 00-1-6547, Superior Court of Cobb County, Georgia. The judgment on jury verdict in Civil Action D97003, Superior Court of Fulton County, Georgia, entered April 7, 1995, has been fully appealed and certiorari denied by this Court on May 4, 1998. *Rolleston v. Cherry*, 226 Ga. App. 750, 487 S.E. 2d 354 (1997); *cert. denied*, 226 Ga. 908 (1997); *cert.*

denied, 523 U.S. 1107, 140 L.Ed. 2d 815, 118 S.Ct. 1677 (1998).

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

There are no compelling reasons for review of the lower state court's decision on writ of certiorari and multiple reasons for denying the writ:

(1) Petitioner misrepresented to this Honorable Court that the Order appealed from in the trial court is the judgment on jury verdict in Civil Action D97003, Superior Court of Fulton County, entered April 7, 1995, which order has been affirmed by the Georgia Court of Appeals, certiorari denied by the Supreme Court of Georgia and by this Honorable Court, conclusively terminating said case on May 4, 1998. *Rolleston v. Cherry*, 226 Ga. App. 750, 487 S.E. 2d 354 (1997); *cert. denied*, 226 Ga. 908 (1997); *cert. denied*, 523 U.S. 1107, 140 L.Ed. 2d 815, 118 S.Ct. 1677 (1998).

(2) Petitioner violated Rule 14(1)(i) of this Court when he failed to attach the Order on summary judgment appealed from in the trial court in Civil Action 00-1-6547, Superior Court of Cobb County, Georgia.

(3) Petitioner seized an opportunity to perpetrate a fraud on this Honorable Court because appellate cases in Georgia courts are assigned docket numbers on appeal which do not reference the case number of the Order appealed from in the trial court. (Respondent's Exhibit "C" is a Notice of Appeal by Petitioner correctly citing the case number and the date of the Order underlying this

Petition.) Respondent's Appendix "E", an order from the Georgia Supreme Court transferring Petitioner's appeal to the Court of Appeals, lists the correct date of the entry of the underlying order, to wit: February 13, 2001. Absent from this Order is any reference to the court of rendition or the original docket number.

(4) Petitioner's argument is without merit because Georgia law mandates that every judgment shall bear interest as a matter of law. O.C.G.A. § 7-4-12.

(5) Petitioner's collateral attack on the Order issued in Civil Action D97003 is barred as a matter of law. O.C.G.A. § 9-11-60(a).

(6) The time for direct attack upon the judgment in jury verdict expired as a matter of law more than two (2) years prior to the filing of Petitioner's Complaint. O.C.G.A. § 9-11-60(f).

(7) Petitioner's claim is barred by Res Judicata. O.C.G.A. § 9-12-40.

ARGUMENT

A. Respondent Was Not Denied a Right to Jury Trial because Georgia Law Imposes Post-Judgment Interest on All Judgments

Petitioner erroneously contends that either (1) he was denied the right to trial by jury guaranteed by the Constitutions of Georgia and of the United States, or (2) that the final judgment in Civil Action D97003 was materially altered by the trial court judge in Superior Court of Fulton County in violation of O.C.G.A. § 9-12-9 to add interest where the jury verdict was devoid of interest. This disingenuous

argument has absolutely no merit. The interest provided in the judgment is a matter of statute and would attach to the judgment, by virtue of the 1987 amendment, regardless of whether it is written into this judgment. O.C.G.A. § 7-4-12.

It has long been the law in Georgia that money judgments are a liquidated demand of highest dignity upon which the creditor is entitled to interest. **Such judgments bear interest from the date of entry both at law and in equity.** *Executrix of Houston v. Mossman*, 1 Ga. Rpt. Ann. (T.U.P.C. 188) 50 (1807); *Guernsey v. Phinizy*, 113 Ga. 898, 39 S.E. 402 (1901). The trial court has no discretion in the matter of post-judgment interest which is mandatory. *Gunnin v. Parker*, 198 Ga. App. 864, 403 S.E. 2d 822, *cert. denied*, 198 Ga. App. 897, 403 S.E. 2d 822 (1991). Respondent is entitled to statutory interest on its judgment as a matter of right.

B. Petitioner's Petition Is Barred by Res Judicata

Petitioner Rolleston was afforded and fully exercised his appellate rights in Civil Action D97003, Superior Court of Fulton County. At no time during the three-year appellate ascension of that case to the United States Supreme Court did Rolleston contest the issue of post-judgment interest. O.C.G.A. § 9-12-40. Petitioner did not raise the issue of interest on the judgment in Civil Action D97003 in either the trial court or in his appeals of that court's decisions.

Had Rolleston desired to litigate the matter in the lower court, he would have been required to bring a Motion to Set Aside under O.C.G.A § 9-11-60(f) within three years from the date of entry of the judgment, to wit:

by April 7, 1998. O.C.G.A. § 9-11-60(f) (the plain language of which includes "*all motions to set aside judgments shall be brought within three years from entry of the judgment complained of*").

Petitioner's entire Argument and Citation to Authorities concerns Civil Action D97003, not the case at bar. The Superior Court of Cobb County concluded as a matter of law that "*The Estate holds a judgment against Defendant Moreton Rolleston, Jr., in Civil Action D97003, Superior Court of Fulton County, which bears statutory interest at twelve (12%) per cent per annum on the principal balance of Five Million, One Hundred Thousand ($5,100,000.00) Dollars from date of judgment pursuant to O.C.G.A. § 7-4-12.*" [Paragraph 14, Appendix "B"] The Final Judgment of the Fulton Court was not reviewable in the Superior Court of Cobb County because arguments related to that earlier proceeding had been fully heard and decided and any arguments that could have been made but were not are nonetheless *res judicata* under O.C.G.A. § 9-12-40.

CONCLUSION

Under no circumstances does Petitioner Rolleston have the right to challenge the summary judgment of the Superior Court of Cobb County at bar. The relief that he is requesting would require this Court to:

1) Ignore the statutory mandate of O.C.G.A. § 7-4-12 which imposes mandatory post-judgment interest;

2) Declare null and void a provision of the Final Judgment on Jury Verdict in Civil Action D97003 which was entered more than six (6)

years ago, has been affirmed by a unanimous Court of Appeals, and for which Certiorari has been sought and denied by the Georgia and United States Supreme Courts; and

3) Reverse a well-considered summary judgment of the trial court below which is supported by law, equity, fact, and reason.

WHEREFORE, Respondent prays that this Honorable Court deny Writ of Certiorari to Petitioner.

Respectfully submitted,

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Counsel of Record

Dated: January 2, 2003

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APPENDIX A

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

MORETON ROLLESTON, JR. and MORETON ROLLESTON, JR. LIVING TRUST, Plaintiffs Vs. ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR, Defendant.	No. 00-1-6547 (Filed Aug. 21, 2000)

COMPLAINT

NOW COMES Moreton Rolleston, Jr. (hereinafter "Rolleston") and Moreton Rolleston, Jr. Living Trust (hereinafter "Trust"), Plaintiffs in the above styled case, and file this their Complaint and show to the Court as follows:

COUNT ONE

1.

The Defendant named herein is the Estate of Rebecca Wight Cherry Sims, John Randolph Cherry Executor (hereinafter "Estate"). John Randolph Cherry lives in Cobb County at 4214 Kinsmon Way, Marietta, Georgia.

2.

In January 1992 the Estate filed a malpractice suit against Rolleston for damages.

3.

On February 27, 1995 Rolleston transferred all of his property both real and personal, to the Trust. On February 27, 1995, Rolleston executed deeds conveying all tracts of land to the Trust. The execution of the deeds was in the presence of two witnesses, one of whom was a Notary Public. The deeds were delivered on February 27, 1995, to the Trust. The deeds were later recorded in the counties of the location of the land, namely, Fulton County, Georgia, Glynn County, Georgia, Clayton County, Georgia and Macon County, North Carolina.

4.

The malpractice case was tried before a jury in Fulton Superior Court, Case No. D-97003, in which the jury found a verdict in favor of the Estate, a copy of said verdict being attached hereto, marked Exhibit "A" and made a part hereof. The trial judge signed an order, pursuant to the verdict, dated the 6th day of April, 1995, a copy of which is attached hereto, marked Exhibit "B" and made a part hereof.

5.

On the 12th day of April, 1995, the Estate filed a complaint in the Fulton Superior Court, Case No. E-37496 in which the Estate asked the Court to declare all of the transfers of land and personal property, as described in

paragraph 3 hereinabove, to be void as to the Estate. The Estate filed a Motion for Summary Judgment and the Court entered an order dated the 7th day of July 1995 that said transfer by Rolleston was void and further issued a temporary injunction preventing Rolleston from selling or transferring any of his property without approval by court order, a copy of which is attached hereto, marked Exhibit "C" and made a part hereof.

6.

In April 2000 a jury trial in case No. E-37496 was held to determine damages. In his opening remarks to the jury, the trial judge stated that said transfer of land and personal property by Rolleston was void as to the Estate, a copy of said remarks by the court is attached hereto, marked Exhibit "D" and made a part hereof.

7.

For the previous three years Rolleston has undertaken to sell real estate in order to raise funds to pay the underlying judgment of $5,200,000. These sales have been made pursuant to court orders issued by the trial judge. Three sales have been consummated. Other sales are subject to on-going negotiations. Title examinations and title policies have been issued for said three sales, but the question has been posed by all title examinators and by purchasers or prospective purchasers as to whether or not legal title is now vested in Rolleston or the Trust. That question is impeding sale of real estate by Rolleston and there are no legal precedents which would help answer the question. The original transfer to the Trust has been held to be void as to the Estate.

8.

Rolleston and the Trust allege that the title to all the property which was transferred from Rolleston to the Trust is held by the Trust, subject only to the orders described hereinabove.

9.

Rolleston and the Trust seek a Declaratory Judgment by this Court to establish the legal ownership of all the property included in the transfer from Rolleston to the Trust.

COUNT TWO

1.

All of the allegations contained in Count One are incorporated herein by reference.

2.

The verdict in Civil Action No. D97003 (Exhibit A) awarded actual damages of $5,100,000 and attorney's fees of $100,000 and no punitive damages. In addition the verdict form submitted to the jury not only included "actual damages" but the verdict provided for no interest.

3.

The judgment of the Court adopted the verdict and held that damages and attorneys fees totaled $5,200,000. The Estate contends that it is entitled to interest at 12% per annum on the judgment and the Estate claims that interest has been accruing at 12% per annum since the

date of the Judgment. The Estate has secured fi fas and recorded same in the execution docket of Fulton Superior Court. A consent order dated August 12, 1997, signed by the trial judge, provided for the sale of real estate on Sea Island, Georgia, consisting of a vacant lot, and of other real estate on St. Simons Island, Georgia under the terms of the consent order. These sales have been consummated and the money was placed in escrow as provided in the consent order.

4.

On November 16, 1999, said order of August 12, 1997, was amended to provide for the sale of a vacant lot on Garraux Road and a house on Sea Island, Georgia, under the terms of the amendment, copy attached (Exhibit E). This sale was completed on July 21, 2000.

5.

The consent order of November 16, 1999, was amended on December 15, 1999, a copy of which is attached hereto, marked Exhibit "F", and made a part hereof. Said order of December 15, 1999, provided that the Estate would refrain from levying on any asset of Rolleston for 150 days, that is, through and including May 16, 2000. Said Order of December 15 1999, was again amended on July 24, 2000, a copy of which is attached hereto marked Exhibit "G" and made a part hereof.

6.

As of July 18, 2000, the Estate has received payments on the principal of the judgment in the total amount of

$2,631,500. The Estate contends that they are entitled to interest on the damage award of $5,200,000 at 12% per annum for five years or a total of $3,120,000. The Estate contends that they have the right to levy on any of the property of Rolleston to satisfy their claim for interest.

7.

Rolleston shows to the Court that if his property is sold at public auction, he will receive less than full market value and will suffer irreparable damages due to said public sale. Rolleston further shows that unless this Court temporarily and permanently enjoins the Estate from selling any of Rolleston's property, for the purposes for raising funds to pay said claim for interest, as a result of execution and public sale Rolleston will suffer irreparable damages, which can only be avoided if this Court issues a Declaratory Judgment.

NOW, THEREFORE, Rolleston prays the Court to issue the following orders:

(a) That this Court issue an order declaring that the Estate is not entitled to any interest on the judgment of $5,200,000 issued in favor of the Estate in Case No. D-97003.

(b) That this Court issue a temporary and permanent injunction prohibiting the Estate from attempting to recover interest as described in this Complaint and from attempting to execute the fi fas to recover interest which have [sic] been secured and recorded in the Fulton Superior Court.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr., Pro Se
and Attorney for Trust
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EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, Executor	CIVIL ACTION CASE NO. D-97003

Plaintiff

vs

MORETON ROLLESTON, JR.

Defendant

VERDICT

We the jury find for the plaintiff and award damages as follows:

1. Actual Damages	$5,100,000
plus any interest	$ 0
2. Expense of Litigation including attorney's fees	$ 100,000
Total	$5,200,000

We find that punitive damages should be awarded ( ) Yes (X) No.

OR

We the jury find for the defendants. ( )

This the 22nd day of March, 1995.

/s/ James A. Robbins, Jr.
FOREPERSON

EXHIBIT B

THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, Executor	CIVIL ACTION
Plaintiff	CASE NO. D-97003
v	(Filed Apr. 7, 1995)
MORETON ROLLESTON, JR.	
Defendant	

JUDGMENT ON JURY VERDICT

This action having come on for trial before the court and a jury, the Honorable Isaac Jenrette, presiding, and the issues having been duly tried, and the jury having duly rendered its verdict (attached hereto as Exhibit "A"),

IT IS HEREBY ORDERED AND ADJUDGED

That the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall recover of the Defendant, Moreton Rolleston, Jr., the principal sum of FIVE MILLION ONE HUNDRED THOUSAND ($5,100,000.00) DOLLARS, plus expenses of litigation in the amount of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS, together with the costs of this action and Judgment is hereby entered for said amount;

That the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall

recover of the Defendant, Moreton Rolleston, Jr., post-judgment interest thereon at the rate of twelve percent (12%) per annum as provided by law, on the principal sum of FIVE MILLION ONE HUNDRED THOUSAND ($5,100,000.00) DOLLARS to the date of satisfaction of said principal sum and Judgment is hereby entered for said amount; and

Plaintiff filed its affidavit showing demand was made via certified mail on January 13, 1993, for unliquidated damages in the amount of One Million ($1,000,000.00) Dollars and Defendant having failed to satisfy said demand within the time required by O.C.G.A. §51-12-14, the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall further recover of the Defendant, Moreton Rolleston, Jr., pre-judgment interest in the amount of Two-Hundred Fifty-Two Thousand Four Hundred Ninety-Three and 15/100 ($252,493.15) Dollars, pursuant to O.C.G.A. §51-12-14, said amount being interest at the rate of twelve percent (12%) per annum running from thirty days after Plaintiff's unliquidated damages demand on January 13, 1993, to the date of Judgment on March 22, 1995. Judgment is hereby entered for said amount.

This 6th day of ~~March~~ Apr, 1995,

~~NUNC PRO TUNC to March 22~~, 1995.

/s/ Isaac Jenrette
The Honorable Isaac Jenrette,
Chief Judge
Fulton County Superior Court

Presented by:

/s/ Shelby A. Outlaw
Georgia State Bar No. 555740

/s/ Scott M. Kaye
SCOTT M. KAYE
Georgia State Bar No. 409310

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APPENDIX B

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

MORETON ROLLESTON, JR. and MORETON ROLLESTON, JR. LIVING TRUST,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO. 00-1-6547-24
ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR	)	(Filed Feb. 13, 2001)
Defendant	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER ON SUMMARY JUDGMENT

The above-referenced action came before this Court on February 5, 2001, on the parties' respective motions for summary judgment. Upon consideration of the pleadings, the affidavits, the evidence in the record and the arguments of Plaintiff Moreton Rolleston, Jr., appearing *pro se* and as counsel for the Moreton Rolleston, Jr. Living Trust and (hereinafter "Plaintiffs") and counsel for the Defendant Estate of Rebecca Wight Cherry Sims (hereinafter "the Estate"), the Court hereby issues its findings of fact and legal conclusions and enters judgment as follows:

FINDINGS OF FACT

1.

The Estate filed an action for legal malpractice, breach of fiduciary duty and fraud against Plaintiff Moreton Rolleston, Jr., on or about February 1992 in Superior Court of Fulton County. The case came on for trial on the 7th day of March, 1995. The jury rendered a verdict on March 22, 1995 awarding damages in the principal amount of Five Million One Hundred Thousand ($5,100,000.00) Dollars and attorney's fees in the amount of One Hundred Thousand ($100,000.00) Dollars. The Estate, Plaintiff in the underlying action, also sought interest on its claim but the jury declined to award interest on the damages.

2.

The Final Judgment on Jury Verdict, entered April 7, 1995 by the Honorable Isaac Jenrette included prejudgment interest for a total judgment debt of Five Million Four Hundred Fifty-Two Thousand Four Hundred Ninety-Three and 15/100 ($5,452,493.15) Dollars. The judgment also provided that post-judgment interest would accrue on the principal sum of Five Million One Hundred Thousand ($5,100,000.00) Dollars at the legal rate of Twelve (12%) per cent until paid in full. Said judgment was affirmed by the Georgia Court of Appeals on March 6, 1997, and certiorari was denied by the Supreme Courts of Georgia and the United States.

3.

Between the date of the verdict and the date of the judgment, Plaintiff Moreton Rolleston, Jr., filed deeds transferring all of his right, title and interest in various real estate to the Moreton Rolleston, Jr., Living Trust, an entity of which he was the Grantor, Beneficiary and Trustee.

4.

The Estate filed an action to set aside the conveyances as fraudulent and for damages and other relief on April 12, 1995. The court entered partial summary judgment on the issue of liability and set aside the conveyances as to the Estate on July 7, 1998. Said judgment was affirmed by the Georgia Court of Appeals on April 12, 1999, and certiorari was denied by the Supreme Courts of Georgia and the United States. The trial on damages concluded on April 21, 2000, with a verdict in favor of the Estate in the amount of Four Million One Hundred Nine Thousand Eighteen and 16/100 ($4,109,018.16) Dollars. Plaintiffs (Defendants in said action) have appealed the Final Judgment on Jury Verdict entered May 10, 2000.

5.

On September 5, 2000, the Estate levied on Plaintiff's real property known as Cottage 303, Sea Island, Georgia (hereinafter "Cottage 303") and received title to the property pursuant to a deed from Sheriff Wayne V. Bennett on its credit bid against the judgment in the amount of Two Million Seven Hundred Twenty-Five Thousand ($2,725,000.00) Dollars.

6.

As of the date of sale, the Final Judgment on Jury Verdict in Civil Action D97003 had accrued interest in the total amount of Three Million Three Hundred Sixteen Thousand Five Hundred Thirty-Two and 38/100 ($3,316,532.38) Dollars. The Estate had also received three payments towards satisfaction of said judgment totaling Two Million Six Hundred Fifty-Nine Thousand Three Hundred Eighty-Seven and 56/100 ($2,659,387.56) Dollars. The total balance of principal and interest due on September 5, 2000, was Six Million One Hundred Ninety-Nine Thousand Seven Hundred Thirty-Four and 47/100 ($6,199,734.47) Dollars. After deductions of the Estate's credit bid, the principal amount of the judgment remaining was Three Million Four Hundred Seventy-Four Thousand Seven Hundred Thirty-Four and 47/100 ($3,474,734.47) Dollars as of September 5, 2000, with post-judgment interest accruing at 12% on said balance since said date.

7.

Sheriff Bennett wrote down the Writ of Fieri Facias in the total amount of Estate's credit bid of Two Million Seven Hundred Twenty-Five Thousand ($2,725,000.00) Dollars. No allowance was made for statutory costs in the amount of Eighty One Thousand Eight Hundred Eighty Seven ($81,887.00) Dollars paid by the Estate to the Sheriff (Affidavit of Sheriff Bennett) or for unpaid taxes, penalty and interest of one (1%) per cent per month owed to the Tax Commissioner of Glynn County by Moreton Rolleston Jr., for the years 1996, 1997, 1998, 1999 and a portion of the year 2000. The total amount of taxes and interest due through the date of sale to the Estate, to wit:

September 5, 2000, is Eighty One Thousand Two and 69/100 ($81,002.69) Dollars in accordance with the affidavit of Florence Dees, Tax Commissioner.

8.

Plaintiff Rolleston took out an advertisement in the *Brunswick Times* objecting to the sale of Cottage 303 and threatening a lawsuit against anyone purchasing the property. Plaintiff Rolleston sued the Sheriff of Glynn County and the Estate on the grounds that the sale was illegal and has refused to abandon the suit. Plaintiff Rollston [sic] filed the instant action contesting the Estate's judgment. Such litigious conduct has interfered with the Estate's ability to convey good marketable title to Cottage 303.

9.

Plaintiffs filed a Motion for summary judgment on October 24, 2000, seeking a declaration that Plaintiff is not entitled to recover interest.

10.

Plaintiffs amended their Motion to seek an order enjoining and restraining Defendant Estate from levying on any of Defendants' property.

11.

Defendant responded to said Motion on December 8, 2000, and filed its motion for a declaration of its rights under the judgment and injunctive relief, with supporting

affidavits of Attorney for the Estate, Shelby A. Outlaw, the Sheriff of Glynn County, Wayne V. Bennett, and the Tax Commissioner of Glynn County, Florence Dees.

12.

Plaintiffs did not file any response to Defendants' Motion for Summary Judgment and Injunctions.

CONCLUSIONS OF LAW

13.

The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, is the lawful holder of title in fee simple to Cottage 303, Sea Island, Georgia, pursuant to O.C.G.A. §9-13-173.

14.

The Estate holds a judgment against Defendant Moreton Rolleston, Jr., in Civil Action D97003, Superior Court of Fulton County, which bears statutory interest at twelve (12%) per cent per annum on the principal balance of Five Million One Hundred Thousand ($5,100,000.00) Dollars from date of judgment pursuant to *O.C.G.A* §7-4-12.

15.

All payments received by the Estate on said judgment are credited first against interest pursuant to *O.C.G.A.* §7-4-17.

16.

After deduction of the Estate's credit bid against accrued interest, costs, attorneys fees and principal, the principal balance of the judgment due the Defendant on September 5, 2000, is Three Million Four Hundred Seventy-Four Thousand Seven Hundred Thirty-Four and 47/100 ($3,474,734.47) Dollars.

17.

Plaintiff Rolleston's conduct caused the Estate to incur additional statutory costs in the amount of Eighty-One Thousand Eight Hundred Eighty-Seven ($81,887.00) Dollars to Sheriff Wayne V. Bennett of Glynn County for public sale.

18.

Plaintiff Rolleston's failure to pay taxes for five years caused the Tax Commissioner of Glynn County to impose tax liens on Cottage 303 and the total amount of unpaid taxes, penalty and interest due and owing by Moreton Rolleston, Jr. through September 4, 2000, prior to transfer of title by public sale on September 5, 2000, is Eighty-One Thousand Two and 69/100 ($81,002.69) Dollars.

19.

Under the equitable doctrine of unjust enrichment, Plaintiff Rolleston is not entitled to profit at Defendants' expense, and Defendant Estate is entitled to recover the sums paid for costs of Sheriff's sale and unpaid taxes in addition to the principal and interest.

20.

An injunction will lie for interference with a creditor's rights pursuant to O.C.G.A. §23-1-22.

21.

Plaintiffs failed to satisfy their burden of proof with respect to their contentions regarding post-judgment interest and restraint of levy.

22.

When Motion for summary judgment is made and supported as provided in *O.C.G.A.* 9-11-56, an adverse party may not rest upon the mere allegations or denials of his pleadings but must respond by affidavits or as otherwise provided by statute setting forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

23.

Judgment shall be rendered forthwith for the moving party if the pleadings and affidavits on file show that there is no genuine issue as to any material fact and the moving party is entitled to summary judgment as a matter of law.

JUDGMENT

Having found that there is no genuine issue of fact remaining for trial on the relief requested in Defendants' Motion for Summary Judgment and that Defendant is

entitled to summary judgment as a matter of law on all of its claims, and having further found that there is no just reason for delay of entry of judgment in favor of the Estate of Rebecca Wight Cherry Sims, the Court pursuant to *O.C.G.A.* §9-11-54(b) hereby directs entry of Final Judgment in favor of Defendant, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, and against Plaintiffs Moreton Rolleston, Jr. Living Trust and Moreton Rolleston, Jr., individually and as Trustee and Beneficiary of said Trust, on all of Defendant's claims and on Plaintiffs' Motion for Summary Judgment, as follows:

1.

The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor (hereinafter "the Estate") owns title in fee simple to Cottage 303, Sea Island, Georgia.

2.

The principal balance due and owing to the Estate by Plaintiffs on September 5, 2000, is Three Million Four Hundred Seventy-Four Thousand Seven Hundred Thirty-Four and 47/100 ($3,474,734.47) Dollars after deduction of the Estate's credit bid on the judgment rendered in Civil Action D97003, Superior Court of Fulton County.

3.

Said principal balance of Three Million Four Hundred Seventy-Four Thousand Seven Hundred Thirty-Four and 41/100 ($3,474,734.41) Dollars bears interest at the

judgment rate of twelve (12%) per cent per annum from September 5, 200 [sic] until paid in full.

4.

Judgment for costs in the amount of Eighty-One Thousand Eight Hundred Eighty-Seven ($81,887.00) Dollars is entered for the Estate and against Plaintiffs.

5.

Judgment for taxes due in the amount of Eighty-One Thousand Two and 69/100 ($81,002.69) Dollars and owing by Defendants prior to sale on September 5, 2000, is entered for the Estate and against Plaintiffs.

6.

Plaintiffs are enjoined and restrained from directly or indirectly interfering with the Estate's title to Cottage 303, Sea Island, Georgia, and the marketing and sale of said property.

7.

Plaintiffs' Motion for Summary Judgment and Injunction is DENIED.

SO ORDERED this 12th day of February, 2001

/s/ Michael Stoddard
MICHAEL B. STODDARD, Judge
Cobb County Superior Court

Order Presented by:

Shelby A. Outlaw
Ga. Bar No. 55540
Attorney for Defendant Estate
The Outlaw Firm
315 Sycamore Street
Decatur, GA 30030
(404) 371-9588

APPENDIX C

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

MORETON ROLLESTON, JR. and MORETON ROLLESTON, JR. LIVING TRUST, Plaintiffs Vs. ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR, Defendant.	No. 00-1-6547-05

NOTICE OF APPEAL

Notice is hereby given that the Plaintiffs in the above styled case hereby appeal to the Supreme Court of Georgia from the judgments of the Superior Court of Cobb County, Georgia, signed by Judge Michael Stoddard on the 12th day of February, 2001, and entered on the 13th day of February, 2001, whereby the Court granted Defendant's Motion for Summary Judgment, and issued a permanent injunction order.

The Clerk will please omit nothing from the record.

Transcript of evidence will be filed for inclusion in the record on appeal.

This Court has jurisdiction of this case under Article 6, Section 6, Paragraph 3 (2) and (5) of the Georgia Constitution.

This 14th day of March, 2001.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.
Attorney for Defendants
Georgia Bar No. 613700

2035 Garraux Road, N.W.
Atlanta, Georgia 30327
404/237-3666

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

MORETON ROLLESTON, JR. and MORETON ROLLESTON, JR. LIVING TRUST, Plaintiffs Vs. ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR, Defendant.	No. 00-1-6547-05

CERTIFICATE OF SERVICE

I, Moreton Rolleston, Jr., hereby certify that I have served counsel of record named below the within and foregoing **Notice of Appeal** by mailing a copy of same to the following named counsel of record at the correct

mailing address with sufficient postage affixed thereto, as follows:

Shelby A. Outlaw
315 Sycamore Street
Decatur, Georgia 30030

This 14th Day of March, 2001.

/s/ Moreton Rolleston, Jr.

APPENDIX D

IN THE
SUPREME COURT
OF THE STATE OF GEORGIA

MORETON ROLLESTON, JR. and MORETON ROLLESTON, JR. LIVING TRUST, Appellants Vs. ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR	CASE NO. S01A1496

ENUMERATION OF ERRORS

The Fulton Superior Court erred in issuing a judgment that granted interest on the damages specified in the verdict. Thus, the Cobb Superior Court erred in denying Rolleston's motion for summary judgment and in granting the Estate's motion for summary judgment.

/s/ Moreton Rolleston, Jr.

IN THE
SUPREME COURT
OF THE STATE OF GEORGIA

MORETON ROLLESTON, JR. and MORETON ROLLESTON, JR. LIVING TRUST,	)	CASE NO. S01A1496
Appellants	)	
Vs.	)	
ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR	)	

CERTIFICATE OF SERVICE

I, Moreton Rolleston, Jr.; hereby certify that I have served counsel of record named below the within and foregoing Enumeration of Errors by mailing a copy of same to the following named counsel of record at the correct mailing address with sufficient postage affixed thereto, as follows:

Shelby A. Outlaw
315 Sycamore Street
Decatur, Georgia 30030

This 25 Day of July, 2001.

/s/ Moreton Rolleston, Jr.

APPENDIX E

[SEAL] **SUPREME COURT OF GEORGIA**

Atlanta September 17, 2001

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

S01A1496; S01A1497. MORETON ROLLESTON, JR., et al. v. JOHN RANDOLPH CHERRY, Exr, et al.

In Case No. S01A14976, appellants seek review of the trial court's February 13, 2001, order denying appellants' motion for summary judgment and injunction and granting appellee's summary judgment motion. The trial court declared that appellee is the lawful holder of title to the property at issue, set forth the principal balance due following a judicial sale of the property, held that under the doctrine of unjust enrichment, appellee is entitled to recover costs for a sheriff's sale and unpaid taxes on the property, and enjoined appellants from interfering with appellee's title to and marketing and sale of the property. In Case No. S01A1497, appellants seek review of the trial court's June 1, 2001, order granting appellee's motion for attorney's fees for abusive litigation pursuant to OCGA § 9-15-14. Appellants seek to invoke this Court's jurisdiction over cases concerning equity and extraordinary remedies. However, the appeals clearly do not invoke this Court's jurisdiction over extraordinary remedies, see *Spence v. Miller*, 176 Ga. 96 (167 SE188) (1932) (jurisdiction over extraordinary remedies applies only to "mandamus, prohibition, quo warranto, and the like"). Furthermore, the appeals do not invoke this Court's equity jurisdiction as the underlying issues on appeal as to

whether the appellee is entitled to interest on the 1995 judgment, to the unpaid taxes and sheriff's sale costs arising from the sale of the property, and to attorney's fees for abusive litigation present questions of law not equity to which the grant of equitable relief, including the permanent injunction barring appellants from interfering with appellee's marketing and sale of the property, was merely ancillary. See *Redfearn v. Huntcliff Homes Assn.*, 271 Ga. 745 (524 SE2d 464) (1999). See also *Smith v. McClung*, 215 Ga. App. 786 (452 SE2d 229) (1994), and *Time Ins. Co. v. Fulton-Dekalb Hosp. Authority*, 211 Ga. App. 34, 35 n. 2 (438 SE2d 149) (1993). Accordingly, these appeals are hereby transferred to the Court of Appeals.

[SEAL] **SUPREME COURT OF THE STATE OF GEORGIA**
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Lynn Stinchcomb, Chief Deputy Clerk

APPENDIX F

FOURTH DIVISION
SMITH, P. J.,
ELDRIDGE AND ELLINGTON, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 14, 2000)

http://www.appeals.courts.state.ga.us/rules.html

May 2, 2002

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A02A0268, ROLLESTON et al. v. ESTATE OF SIMS, JOHN RANDOLPH CHERRY, Executor.

SMITH, Presiding Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No reversible error of law appears and an opinion would have no precedential value;

(3) The judgment of the court below adequately explains the decision; and

(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Eldridge and Ellington, JJ., concur.

APPENDIX G

IN THE
COURT OF APPEALS
STATE OF GEORGIA

MORETON ROLLESTON, JR., ET AL Appellants VS ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR, Appellee.	)	CASE NO. A02A0268

NOTICE OF FILING PETITION OF CERTIORARI

Come now Appellants in the above appeal and show this day filing an application of Certiorari with the Supreme Court of Georgia.

This 17 day of May, 2002.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.
Pro Se and Attorney for
Trust and Trustee
Georgia Bar No. 613700

2035 Garraux Road, N.W.
Atlanta, Georgia 30327
404/237-3666

IN THE
COURT OF APPEALS
STATE OF GEORGIA

MORETON ROLLESTON, JR., ET AL Appellants VS ESTATE OF REBECCA WIGHT CHERRY SIMS, JOHN RANDOLPH CHERRY, EXECUTOR, Appellee.	)	CASE NO. A02A0268

CERTIFICATE OF SERVICE

I, Moreton Rolleston, Jr., hereby certify that I have served counsel of record named below with the within and foregoing **Notice of Filing Petition of Certiorari** by mailing a copy of same to the following named counsel of record at the correct mailing address with sufficient postage affixed thereto, as follows:

Shelby A. Outlaw
315 Sycamore Street
Decatur, Georgia 30030

This 17 day of May, 2002.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.

APPENDIX H

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: September 06, 2002

Shelby A. Outlaw
THE OUTLAW FIRM
315 Sycamore Street
Decatur GA 30030

Case No. S02C1340

MORETON ROLLESTON, Jr., et al. v. ESTATE OF REBECCA WIGHT CHERRY SIMS et al.

COURT OF APPEALS CASE NO. A02A0268

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

_____

_____

_____

_____

Sherie M. Welch, Clerk

_____

APPENDIX I

IN THE
SUPREME COURT
OF THE STATE OF GEORGIA

MORETON ROLLESTON, JR., et al Appellants Vs ESTATE OF REBECCA WIGHT CHERRY SIMS, et al Appellee.	)	CASE NO. S02C1340

NOTICE OF FILING OF PETITION FOR
CERTIORARI IN UNITED STATES SUPREME COURT
And MOTION TO STAY REMITTITUR

Moreton Rolleston, Jr.
Attorney for Appellants
Georgia Bar No. 613700
2035 Garraux Road, N.W.
Atlanta, Georgia 30327
404/237-3666

Appellants in the above styled case hereby give notice of intent to file Certiorari in the United States Supreme Court.

Appellants move the Court to Stay the Remittitur in the above styled case pending the disposition of the petition for Certiorari. The issues to be raised are same as in this Court. The judgment of the lower court violated Amendment Seven to the Constitution of the United

States, Article I, Section 1, Paragraph 11 of the Constitution of the State of Georgia and O.C.G.A. § 9-12-9.

/s/ Moreton Rolleston, Jr.

IN THE
SUPREME COURT
OF THE STATE OF GEORGIA

MORETON ROLLESTON, JR., et al Appellants VS ESTATE OF REBECCA WIGHT CHERRY SIMS, et al Appellee.	)	CASE NO. S02C1340

CERTIFICATE OF SERVICE

I, Moreton Rolleston, Jr., hereby certify that I have served counsel of record named below with the within and foregoing **Notice of Filing Of Petition For Certiorari In United States Supreme Court and Motion to Stay Remittitur** by mailing a copy of same to the following named counsel of record at the correct mailing address with sufficient postage affixed thereto, as follows:

Shelby A. Outlaw
315 Sycamore Street
Decatur, Georgia 30030

This 10th day of September, 2002.

/s/ Moreton Rolleston, Jr.
Moreton Rolleston, Jr.